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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/661,064	09/13/2000	Donald Eugene Brodnick	GEMS8081.040	7626

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EXAMINER	
KHAN, OMAR A	
ART UNIT	PAPER NUMBER
3762	

DATE MAILED: 07/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/661,064	Applicant(s) BRODNICK ET AL.	
	Examiner Omar A Khan	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 September 2000* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *9/13/2000* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *3* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1. Claims 16-35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 5.

2. The Applicant claims inventions in different statutory categories in claim sets 1-25 and 26-35 (namely appartatus and process), and thus only one-way distinctness is needed to support a restriction requirement. See MPEP §806.05(c). Process and apparatus for its practice can be shown to be distinct inventions, if either or both of the following can be shown: (A) that the process as claimed can be practiced by another materially different apparatus or by hand; or (B) that the apparatus as claimed can be used to practice another and materially different process. In this case, as cited in the initial action, the process as claimed can be practiced by another and materially different apparatus from inventions I and II that does not assess the ECG data and provide instructions to the patient based on the multi-channel ECG assessment, but by any one of numerous apparatuses such as an apparatus that stores the ECG data in memory. Further, the process and apparatus have a separate status in the art because of their recognized divergent subject matter as demonstrated not only by one-way distinctness but also by the dissimilar scope of the claimed inventions. Thus, the Applicant's arguments have been considered but are not persuasive and restriction for examination purposes as indicated is proper.

Specification

1. The Claims contain a typing error in Claim 1, line 5 where "of cardiac condition of the patient" should read –of a cardiac condition of the patient-.

2. The use of the trademark WebTV has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is vague and indefinite for citing the limitations "a plurality of lead wires", and "a health care provider" which are inferentially included and not positively recited in the claims. Further, the scope of the claimed invention is unclear as it is not explicitly evident if the claims contains these limitations.

Claim 2 is vague and indefinite for citing the limitation "voice data" which is inferentially included and not positively recited in the claims. Claim is incomplete for omitting an element to generate voice data.

Claim 3 contains the trademark/trade name WebTV. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe an interactive Internet appliance and, accordingly, the identification/description is indefinite.

Claim 4 is vague and indefinite for citing the limitation "a data transmission link" which is inferentially included and not positively recited in the claims. Furthermore, the claim is incomplete for omitting an element to "prompt the patient" (an indicator or the like) which would be the object of the processor's determination that assistance is required.

Claim 5 is vague and indefinite for citing the limitation "a desired transmission mode" since it is unclear whether the desired transmission mode(s) is predetermined or not. Furthermore, the claim is vague and indefinite for citing the limitation "audio communication data" which is inferentially included and not positively recited in the claims. The claim is incomplete for omitting an element to for performing a desired transmission mode (switch, etc) which would, in turn, indicate to the processor the desired transmission mode, and for omitting an element to receive audio communication data.

Claim 6 is vague and indefinite for citing the limitation "video" which is inferentially included and not positively recited in the claims. Claim 6 is incomplete for omitting an element

to generate video data. Furthermore, Claim 6 is vague and indefinite for citing the limitation "bi-directional" since the element with which the processor is programmed to include bi-directional transmission is not explicitly stated.

Claim 7 is vague and indefinite for citing the limitations "a video and audio monitor" which are inferentially included and not positively recited in the claims. The phrase "to receive ECG data" is vague and indefinite as it is unclear which of the elements cited are receiving the ECG data- the interactive internet appliance, the video monitor, or the audio monitor. Claim 7 is vague and indefinite for citing the limitation "a video camera and a microphone" as it is unclear whether this is in addition to the video and audio monitor cited previously.

Claim 8 is vague and indefinite for citing the limitation "an interconnected global computer system" which is inferentially included and not positively recited in the claims.

Claim 10 is vague and indefinite for citing the limitation "data instructions" which are inferentially included and not positively recited in the claims. Furthermore, Claim 10 is incomplete for omitting the structural relationship or connection between the infrared transmitter, the infrared receiver and the claimed invention of the parent claims.

Claim 12 is vague and indefinite as it is not distinctly clear whether the data, the data storage element, the portable computer, or all three are "downloadable at the healthcare facility".

Claim 13 is vague and indefinite for citing the limitation "in transmit" as it is not distinctly what "in transmit" refers to and thus, the scope of the claimed invention is unclear.

Claim 15 is vague and indefinite for citing the limitation "a signal" which is inferentially included and not positively recited in the claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by David et al. (US Patent No. 5,544,649).

5. Claims 1, 2, 4-6, 11-13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bornn et al. (US Patent No. 5,564,429).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 3 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over David et al. (U.S. Patent No. 5,544,649). David discloses all of the claimed limitations but does not explicitly speak to a WebTV appliance or an interactive Internet appliance. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ambulatory patient health monitoring process and apparatus of David to use an interactive

Internet appliance (WebTV) since it was well known in the art to use interactive Internet appliances and interactive cable television to easily transfer large amounts of voice, video and data concurrently so that one of ordinary skill would modify the health monitoring apparatus of David to include an interactive Internet appliance.

7. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bornn et al. (US Patent No. 5,564,429). Bornn discloses all of the claimed limitations but does not speak to an interactive Internet appliance to transmit ECG data to the healthcare provider. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cardiorespiratory alert system of Bornn to include an interactive Internet appliance since it was well known in the art to use interactive Internet appliances, such as computers, to easily transmit large amounts of data via the Internet.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over David et al (U.S. Patent No. 5,544,649). David discloses all of the claimed limitations but does not explicitly speak to an infrared transmitter and an infrared receiver as the wireless communication interface. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ambulatory patient health monitoring process and apparatus of David to use an infrared received and transmitter since it was well known in the art to use infrared transmission schemes in health monitors for transmitting and transferring data over short distances and for ease of use of the monitors without the burden of transmission lines potentially getting tangled.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bornn et al. (US Patent No. 5,564,429). Bornn discloses all of the claimed limitations but does not explicitly speak to an infrared transmitter and an infrared receiver as the wireless communication interface.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ambulatory patient health monitoring process and apparatus of Bornn to use an infrared received and transmitter since it was well known in the art to use infrared transmission schemes in health monitors for transmitting and transferring data over short distances.

10. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bornn et al. (US Patent No. 5,564,429) in view of Morgan et al. (US Patent No. 5,782,878). Bornn discloses all of the claimed limitations but does not speak explicitly to a GPS system connected to the wireless communication interface. Morgan teaches an external defibrillator with a communication network having a GPS system for allowing remote determination of the location of a patient by a health care provider. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cardiorespiratory alert system of Bornn and include a GPS system, as taught by Morgan for allowing a remote health care provider to determine the location of the patient.

11. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bornn et al. (US Patent No. 5,564,429) in view of Morgan et al. (US Patent No. 5,782,878). Bornn, in view of Morgan, discloses all of the claimed limitations but does not speak explicitly to the GPS system being enabled by the health care provider. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cardiorespiratory alert system of Bornn to include a means to enable the health care provider to enable the GPS system since it was well known in the art to allow a remote health care provider to control local, ECG monitor functionality, especially a GPS system, and one ordinary skill would allow for remote

enablement of the GPS system to locate the patient when he/she is distressed and unable to communicate his/her location.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Omar A Khan whose telephone number is (703) 308-0959. The examiner can normally be reached on M-F 9AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0873.

7/12/2002

Omar A Khan
July 12, 2002

GEORGE R. EVANISKO
PRIMARY EXAMINER
7/12/2